

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of the Cape Light Compact )  
and Various Member Towns Regarding )  
the Purchase of Street Lighting Equipment ) D. T. E. 01-25  
from Commonwealth Electric Company )  
)

#### REPLY BRIEF OF THE CAPE LIGHT COMPACT

The Compact's Opening Brief anticipated and rebutted the arguments advanced by the Company in its Opening Brief. Hence, the Compact writes briefly to clarify a few issues:

##### 1. Amortization Versus Depreciation

The Company contends that the Compact has attempted to draw a "hyper-technical distinction" between "amortization" and "depreciation." The Company contends that these two terms are often used interchangeably to mean the same thing. Company Brief at 8-10. (1)

The Company misunderstood the Compact's argument. The Compact is not claiming that there is a material difference between the words "amortization" versus "depreciation." Instead, the Compact is pressing the difference between two underlying concepts of depreciation/amortization. The first meaning of depreciation, also called amortization, is the writing off of an asset over time based on formulas approved in ratemaking proceedings. The second is the valuation of an asset based on its physical decline and expected mortality.

The question in this case is which concept the Legislature embraced when it used the term "unamortized investment" in G.L. c. 164, §34A (b). The Compact contends that the Legislature chose the former concept, because the Legislature used the term "amortization", and because "depreciation" in the utility ratemaking context refers to amortization. Bonbright explains this perfectly:

The deduction for depreciation as a negative term of the rate base does not purport to measure the loss in value actually sustained by the depreciable fixed assets since their dates of acquisition. What it represents is the amortized costs of the assets in the sense of the part of the costs which has already been charged, or which should have been charged to previous periods of operation... what is deducted as depreciation is the cost that has been, or should have been, amortized, and not the actual decline in value, estimated with the benefit of hindsight.

Untitled

Bonbright, Principles of Public Utility Rates, p. 270, Exhibit Compact 4.

The Compact's method adheres to this traditional notion of amortization/depreciation. The Company's does not, because it is based on physical depreciation and the actual decline in value. See Opening Brief at 5-7.

Thus, the Company's effort to distinguish amortization from depreciation misses the point, and obscures, rather than clarifies, the actual issue in dispute here.

## 2. Consistency with Company Practice

The Company also insists that its method is consistent with its past practice. The Company first points out that for ratemaking and accounting purposes, it subtracts its actual accumulated depreciation reserve from the original cost of the plant. Company Brief at 11. This is true, but it does not support the Company's position here. While the Company does value the streetlight plant as a whole in this manner, it does not value streetlights in a particular municipality in this manner. This is because the Company admits there is no "actual reserve" for each town. Rather than using an "actual reserve," the Company instead 1) constructs a "theoretical reserve" based on mortality curves; 2) compares the theoretical reserve to the actual reserve; and 3) adjusts depreciation rates for the purchasing towns accordingly. Exhibit Compact 5, Tr. 23-28. (2)

The Company cites to no past precedent for this theoretical reserve allocation. Indeed, it admits that it has never used this methodology for any purpose other than this case. Exhibit CLC 2-24. Nor has the Company cited a single ruling from this Department or any other one approving this methodology for the valuation of an asset. Thus, the Company's claim that its methodology is "tried and true" is not supported.

## 3. Stranded Costs

The Company insists that its method, but not the Compact's, fully compensates the Company, and avoids having a stranded cost. Company Brief at 12. The Compact certainly agrees that the Company's method fully compensates the Company -- that is its single purpose. However, the Company completely fails to explain why it is fair to charge these three towns for the costs of early retirements that it cannot attribute to these three towns. In fact, the Company has not even quantified this cost on a system-wide basis. (3)

## CONCLUSION

The Company has failed to advance any persuasive rationale for its method. In contrast, the Compact's method is fair, consistent with the statutory language, based on Department-approved depreciation rates, and is easy and transparent to administer. For all of these reasons, the Department should approve the Compact's method and rule that the purchase price for Edgartown, Harwich, and Sandwich is \$1.00 each.

Respectfully Submitted

By its attorneys,

Untitled

Kenneth L. Kimmel

Jeffrey M. Bernstein

Cristin L. Rothfuss

BERNSTEIN, CUSHNER & KIMMELL, P.C. 585 Boylston Street, Suite 200

Boston, Massachusetts 02116 (617) 236-4090 (voice)

(617) 236-4339 (fax)

Dated: May 11, 2001

1. The Company also advances a contradictory argument -- that amortization and depreciation are different, because amortization applies to intangible assets, while depreciation applies to tangible assets. This distinction between tangible and intangible assets is of no use here, because the legislature used the term "unamortized investment" to refer to streetlights, which are a tangible asset.
2. It is notable that in the Company's Opening Brief, it does not contest the detailed explanation of the Company's method that Mr. Chernick provided at the hearing.
3. The Company cites to Exhibit CLC 2-36, in which it suggests that it will experience a \$1.7 million shortfall. However, as Mr. Farrell explained, that shortfall is not the difference between the Company's method and the Compact's method. Tr. 112-113. Instead, that number represents the difference between the Company's February method and the Company's December method. Id. The Company has not calculated what monetary loss it will experience on a system-wide basis if the Compact's method is approved. This silence on this issue is curious, because the Company certainly could have provided such a calculation had it wished to do so.